



Attorney or Party Name, Address, Telephone & FAX Nos., State Bar No. & Email Address Christopher Celentino (CASB No. 131688) christopher.celentino@dinsmore.com Ashleigh A. Danker (CASB No. 138419) ashleigh.danker@dinsmore.com Dinsmore & Shohl LLP 655 West Broadway, Suite 800 San Diego, CA 921010 Tel: 619-400-0500 Fax: 619-400-0501 <input type="checkbox"/> Individual appearing without attorney <input checked="" type="checkbox"/> Attorney for: Peter J. Mastan, Trustee	FOR COURT USE ONLY
UNITED STATES BANKRUPTCY COURT CENTRAL DISTRICT OF CALIFORNIA - SANTA ANA DIVISION 	
In re: RUBY'S FRANCHISE SYSTEMS, INC. Debtor(s).	CASE NO.: 8:18-bk-13324-SC CHAPTER: 11  NOTICE OF SALE OF ESTATE PROPERTY

Sale Date: 10/30/2020	Time: 10:00 am
Location: Court Call or Zoom.Gov*	

Type of Sale: ☒ Public ☐ Private **Last date to file objections:** 10/16/2020

Description of property to be sold:

Substantially all assets of the Debtor regarding its operations as master franchisor for Ruby's Diner, Inc., including License Agreement, franchise agreements, and ancillary personal property. Excludes, among other things, cash on hand, accounts receivable, all executory contracts that are not Assumed Contracts, and litigation claims (including but not limited to, avoidance claims arising under Ch. 5 of Title 11 and any claims against former directors and officers).

Terms and conditions of sale:

The Trustee is actively soliciting overbids. Sale and Bid Procedures are attached hereto. Any interested bidder is encouraged to obtain a copy of the Motion and contact the RFS Trustee's counsel (christopher.celentino@dinsmore.com) as soon as possible. The Property will be sold by auction ("Auction") to be conducted by the Trustee in Court, at the time that the Motion is heard.

Proposed sale price: \$ 1,700,000.00

Overbid procedure (if any):

See Sale and Bid Procedures, attached hereto, and Motion for complete details. Initial overbid is \$1,850,000; deposit is \$150,000; each successive overbid shall be at least \$25,000; "as-is," "where-is," subject to terms of APA.

If property is to be sold free and clear of liens or other interests, list date, time and location of hearing:

Hearing

Date: October 30, 2020

Time: 10:00 a.m.

Ctrm: Virtual

Location: Zoom.Gov*

*Except as may be otherwise ordered by the Court, all hearings through the end of 2020 before Judge Scott Clarkson will be conducted remotely using CourtCall or ZoomGov. The Court's default will be CourtCall, unless specifically noted otherwise in the Court's tentative.

Contact person for potential bidders (include name, address, telephone, fax and/or email address):

Christopher Celentino

christopher.celentino@dinsmore.com

Ashleigh A. Danker

ashleigh.danker@dinsmore.com

Dinsmore & Shohl LLP

655 West Broadway, Suite 800

San Diego, CA 92101

Tel: 619-400-0500 (or 619-218-3229, Chris Celentino mobile #)

Fax: 619-400-0501

Date: 10/10/2020

SALE AND BID PROCEDURES

The following sale and bid procedures (the "Bid Procedures") govern the sale (the "Sale") of certain assets of the estate (the "Estate"), and defined as the "Property" in the Asset Purchase Agreement with Britt Private Capital, LLC and Jupiter Holdings LLC (and/or their designee) ("Buyer") (such Asset Purchase Agreement, as at any time amended or modified, the "Asset Purchase Agreement") in connection with Ruby's Franchise Systems, Inc. (the "Debtor"), having filed a voluntary petition under chapter 11 of title 11 of the United States Code, as amended (the "Bankruptcy Code") in the United States Bankruptcy Court for the Central District of California, Santa Ana Division (the "Bankruptcy Court"), commencing the chapter 11 case (the "Case"), pending as Case No. 8:18-bk-13324-SC (the "Bankruptcy Case"). On or about April 21, 2020, Peter Mastan was appointed by order as Chapter 11 trustee (the "Trustee" or the "Seller") in the Bankruptcy Case. By order of the Bankruptcy Court, these Bid Procedures have been approved and are applicable to all Bidders and Bids, with any proposed Sale of the Property to be subject to the final approval of the Bankruptcy Court. In the event of any conflict between the terms hereof and the Asset Purchase Agreement, the terms of the Asset Purchase Agreement shall govern.¹

I. THE PROPERTY

A. The Property includes among other property, all of the Estate's right, title and interest in and to the assets of the operating business known as Ruby's Franchise Systems, Inc., various of its executory contracts (including but not limited to the Amended and Restated Trademark License Agreement dated as of September 9, 2011 and effective as of June 1, 1990), and franchise agreements, and ancillary personal property, all as more particularly described in the Asset Purchase Agreement and schedules thereto, except for Excluded Assets, as set forth therein. Interested parties are encouraged to consult the Debtor's bankruptcy Schedules, as amended, for a detailed listing of the Debtor's assets. Notwithstanding the foregoing, expressly excluded from Property are claims, causes of action and rights of recovery pursuant to sections 544 through 550, 551 and 553 of the Bankruptcy Code and other Excluded Assets as defined in the Asset Purchase Agreement.²

B. The Property, as more particularly described in the Asset Purchase Agreement, is to be sold in a single aggregate lot at the Auction provided for under these Bid Procedures (the "Auction"), subject to competitive bidding in accordance with these Bid Procedures and Bankruptcy Court approval.

C. "AS IS, WHERE IS." SUBJECT TO THE TERMS OF THE ASSET PURCHASE AGREEMENT, THE SALE OF THE PROPERTY WILL BE ON AN "AS IS, WHERE IS" BASIS AND WITHOUT REPRESENTATIONS OR WARRANTIES OF ANY KIND, NATURE, OR DESCRIPTION BY THE DEBTOR, ITS ESTATE, THE TRUSTEE, OR THEIR RESPECTIVE AGENTS INCLUDING WITHOUT LIMITATION ANY REPRESENTATION OR WARRANTY AS TO MERCHANTABILITY

¹ All dates set forth herein are subject to Bankruptcy Court approval and may be revised by the Bankruptcy Court.

² The Asset Purchase Agreement, as defined herein, shall contain the definitive and controlling list of the Property and the Excluded Assets and the description of such Property and the Excluded Assets in these Bid Procedures is intended solely for informational purposes.

OR FITNESS FOR ANY PARTICULAR PURPOSE, EXCEPT TO THE EXTENT EXPRESSLY SET FORTH IN THE ASSET PURCHASE AGREEMENT.

NONE OF THE DEBTOR, THE TRUSTEE NOR THEIR RESPECTIVE COUNSEL, PROFESSIONALS, OFFICERS, EMPLOYEES, REPRESENTATIVES OR AGENTS MAKES ANY REPRESENTATION OR WARRANTY REGARDING THE PROPERTY, OTHER INFORMATION OR REGARDING THE DEBTOR, ITS OPERATIONS, ASSETS, LIABILITIES, CONTRACTS, LIENS OR FINANCIAL CONDITION PROVIDED TO A POTENTIAL BIDDER IN CONNECTION WITH THE BID PROCEDURES SET FORTH HEREIN, THE SALE, THE AUCTION OR THE PROPERTY. CONSEQUENTLY, NO REPRESENTATION IS MADE BY THE DEBTOR, THE TRUSTEE OR THEIR RESPECTIVE COUNSEL, PROFESSIONALS, OFFICERS, EMPLOYEES, REPRESENTATIVES OR AGENTS REGARDING THE ACCURACY, RELIABILITY, VERACITY, ADEQUACY, OR COMPLETENESS OF ANY INFORMATION PROVIDED IN CONNECTION WITH OR RELATED TO THESE BID PROCEDURES, THE PROPERTY, THE AUCTION OR THE SALE AND ALL INTERESTED PARTIES ARE ENCOURAGED TO CONSULT WITH THEIR OWN ADVISORS REGARDING ANY SUCH INFORMATION.

D. The Sale must be entirely for cash consideration to the Estate (i.e. no Seller financing, and no bidding with alleged setoffs, recoupments, credit bid or other non-cash consideration), except as expressly provided otherwise herein or in the Asset Purchase Agreement.

E. Sale Free and Clear. All of the right, title, and interest in and to the Property will be sold free and clear of all liens, security interests, encumbrances, claims, charges, options, and interests thereon or therein (collectively, the "Liens"), all as more fully set forth on Exhibit "B" hereto (as such may be amended in the reasonable discretion of Buyer) and incorporated herein by reference as though fully set forth, except as otherwise set forth herein.

After closing of the Sale, Liens will attach to any net cash proceeds from the Sale of the Property, in the order of their priority, with the same validity, force, and effect (if any) which they now have against the Property, except as to any such Lien which the Asset Purchase Agreement provides is a lien which shall remain as a Lien on the Property and that the Property shall be transferred subject to such Lien.

F. Asset Purchase Agreement. Except as otherwise set forth herein, any Sale will be made only under the same or substantially identical terms and conditions as set forth in the form of the Asset Purchase Agreement with Buyer and attached to the order setting these bid procedures (the "Sale and Bid Procedures Order"). The Asset Purchase Agreement may be obtained by any Potential Bidder (as defined below) by contacting the Trustee's counsel as follows: Christopher Celentino, Esq., Dinsmore & Shohl LLP, 655 W. Broadway, Suite 800, San Diego, California 92101, Telephone: 619-218-3229, Facsimile: 619-400-0501, e-mail: christopher.celentino@dinsmore.com.

(1) Executory Contracts and Unexpired Leases. The Asset Purchase Agreement shall set forth each executory contract and unexpired lease and/or other agreement to be assumed and assigned to the purchaser pursuant thereto, and the estimate of any cure payment amount required for same,

although it shall be the responsibility of the Estate to pay any such cure amounts. Contract counterparties shall have the opportunity to object to the assumption and/or assignment of any such executory contract or unexpired lease and/or other agreement and to the proposed cure amount related thereto, and to the extent not resolved consensually prior to the Sale Hearing (as defined below), the Bankruptcy Court shall resolve any such objection at the Sale Hearing (or other date set by the Bankruptcy Court). If one or more cure payments are required to be made to effectuate an assignment pursuant to this Agreement, then Seller shall have the unfettered right to decide whether to (a) pay such amount, with Court approval, or (b) terminate this Agreement and return to Buyer the Deposit, leaving the Parties in the position they were in as of the commencement of this Agreement; provided, however, should Seller decide not to pay such amount, Buyer shall have the right to pay such amount, which payment shall be in addition to the Purchase Price.

II. STALKING HORSE BIDDER

A. Buyer is the stalking horse bidder (the "Stalking Horse Bidder") and the purchaser under the Asset Purchase Agreement to purchase the Property for One Million Seven Hundred Thousand Dollars (\$1,700,000.00) (the "Cash Component"), and such amount is the starting bid (the "Starting Bid"). The Purchase Price also includes other components, including Assumed Contracts (as defined in the Asset Purchase Agreement). The Starting Bid is subject to overbid and an auction as set forth herein as well as Bankruptcy Court approval.

B. For the purposes of these Bid Procedures, subject to Buyer timely paying the "Deposit" as required under the Asset Purchase Agreement, Buyer is a Qualified Bidder, as defined herein.

C. Subject to approval of the Bankruptcy Court, in recognition of Buyer's (as the Stalking Horse Bidder) expenditure of time, energy and resources, if the Sale of the Property with Buyer does not close with Buyer but closes with another Bidder, or if another Bidder is the Successful Bidder but the Sale does not close with such other Bidder and such other Bidder's Deposit (or portion thereof) is forfeited, Buyer will be paid a fixed break-up fee of \$75,000.00 (the "Break-Up Fee"). In the event Buyer is entitled to the Break-Up Fee, the Break-Up Fee shall be paid to Buyer at the time of the closing of the Sale or within five (5) business days after the retention and/or release of the Deposit (or portion thereof) to the Trustee or the Estate, whichever occurs first. Buyer shall not be entitled to a credit for or to net out the Break-Up Fee in any Bid that Buyer makes for the Property; and in no event will Buyer be entitled to the Break-Up Fee if it is the Successful Bidder

III. DUE DILIGENCE

A. Neither the Debtor, the Trustee, nor their representatives shall be obligated to furnish any information of any kind whatsoever relating to the Property except as ordered by the Bankruptcy Court. Each interested bidder (a "Potential Bidder") is free to review filings made in the Bankruptcy Case and other public filings and information as it desires. Notwithstanding the foregoing, upon execution of an appropriate Confidentiality and Non-Disclosure Agreement (the "NDA"), interested bidders can gain access to an

electronic "data room" where the Debtor's confidential books and records which are in the possession or control of the Trustee are available for inspection.

B. Each Potential Bidder and Bidder shall be deemed to acknowledge that it has relied solely upon its own independent review, investigation and/or inspection of any documents in making its bid, and that it did not rely upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express, implied, by operation of law or otherwise, regarding the Property, or the completeness of any information provided in connection with the bidding process.

IV. BID DEADLINE AND DISTRIBUTION OF QUALIFIED BIDS

A. Bid Deadline. Except as set forth in Article V hereof, a Potential Bidder that desires to make a Bid shall deliver written copies of its completed Bid Package to the Trustee as follows: c/o Christopher Celentino, Esq., Dinsmore & Shohl LLP, 655 W. Broadway, Suite 800, San Diego, California 92101, Telephone: 619-218-3229, Facsimile: 619-218-3229, e-mail: christopher.celentino@dinsmore.com, **not later than 5:00 p.m. prevailing Pacific Time on October 20, 2020** (the "Bid Deadline"). A Bid will not be considered by the Trustee, and will not qualify as a Qualified Bid, unless the Bid Package is actually received by the Trustee, either by hard copy or electronically, including evidence of the completion of the wire transfer or delivery of the cashier's check for the Deposit, on or prior to the Bid Deadline.³

B. Transmission of Bids to Counsel for the Debtor, and to all Qualified Bidders. The Trustee shall transmit a summary of all Qualified Bids received by the Bid Deadline (including the identity of the Bidder), via email, to Eric Fromme (efromme@tocounsel.com), counsel for the Debtor, and to all Qualified Bidders by 5:00 p.m., prevailing Pacific Time within two (2) business days after the Bid Deadline.

V. BID PACKAGES

A. Bid Amount. In order for a Potential Bidder's initial bid to purchase the Property (each a "Bid") to qualify for consideration (upon such qualification, the Potential Bidder making such Qualified Bid (as defined herein) shall become a "Bidder"), the Cash Component of such Bid must be at least One Million Eight Hundred And Fifty Thousand Dollars (\$1,850,000.00) (the "Initial Overbid"). The Initial Overbid includes the amount of the Break-Up Fee. Pursuant to the Asset Purchase Agreement, there is no broker's commission being paid as part of the sale.

B. Bid Packages. In order for a Potential Bidder's initial Bid to qualify for consideration (upon such qualification, the Potential Bidder making such Qualified Bid (as defined herein) shall become a "Bidder"), such Bid must also consist of the following information and items (collectively, the "Bid Package") and be delivered to the Trustee as follows: c/o Christopher Celentino, Esq., Dinsmore & Shohl LLP, 655 W. Broadway, Suite 800, San Diego, California 92101, Telephone: 619-218-3229, Facsimile:

³ No such information, if any, shall act as a representation or warranty of any kind and shall not affect or modify the "AS IS, WHERE IS" nature of the Sale as provided in Article I.C above.

619-400-0501, e-mail: christopher.celentino@dinsmore.com, so that it is actually received by no later than the Bid Deadline, without extension:

1. Copy of Asset Purchase Agreement. A written offer in the form of the Asset Purchase Agreement executed by the Bidder or its duly-authorized representative (if an entity), to acquire the Property for an exact amount of consideration, in U.S. Dollars, which must:

- a.** provide such consideration payable by wire transfer at closing;
- b.** be unconditional, save and except for Bankruptcy Court approval, and without limiting the generality of the foregoing, must not be conditioned upon acceptance of one or more other bids, financing or additional due diligence, and shall not entitle the Bidder to any break-up fee, termination fee, expense reimbursement, or similar type of payment;
- c.** be for the entirety of the Property as described in the Asset Purchase Agreement; and
- d.** contain the same or substantially identical terms and conditions as the Asset Purchase Agreement, or such other "other" terms as determined by the Bankruptcy Court.

2. A "redlined" or otherwise marked copy of the Asset Purchase Agreement reflecting any revisions, changes and differences made to conform the Asset Purchase Agreement to the Bidder's Asset Purchase Agreement, provided that such Asset Purchase Agreement shall not be effective until such Bidder is declared the Successful Bidder or Backup Bidder (and the Asset Purchase Agreement may be required to be conformed to the Successful Bid or Backup Bid) as provided in these Bid Procedures.

3. The Bidder's written, binding commitment that:

- a.** the Bid, including the Deposit, is irrevocable until the closing of the Sale;
- b.** the Bidder agrees to keep its Bid confidential except to the extent that disclosure is expressly contemplated or provided in these Bid Procedures;
- c.** if the Bidder is selected as the Successful Bidder, such Bidder is ready, willing and able to close on the purchase of the Property with no contingencies whatsoever, other than Bankruptcy Court approval of the transaction; and
- d.** if the Bidder is selected as the Backup Bidder, then should the Sale to the Successful Bidder fail to close for any reason and the Trustee notifies the Backup Bidder that it has elected to sell the Property to the Backup Bidder then the Backup Bidder is ready, willing and able to close on the purchase

of the Property with no contingencies whatsoever other than Bankruptcy Court approval of the transaction, within two (2) business days of receipt of written notice from the Trustee of such election.

4. Satisfactory financial information (as determined in the Trustee's sole discretion) demonstrating an ability to close and consummate the transaction proposed under the Bid and to perform all obligations associated therewith may include:

- a.** recent financial statements of the Bidder (or if the Bidder is an entity recently formed for the purpose of acquiring the Property, current financial statements of one or more direct or indirect controlling equity holder(s) of the Bidder and that has agreed to guarantee the obligations of Bidder), current audited financial statements, a non-contingent financing commitment from an accredited financial institution, copies of current statements or correspondence from a bank or other accredited financial institution evidencing that the Bidder has sufficient liquid assets available to consummate the Sale and to perform all ongoing obligations associated therewith (together with a certification under oath that such assets shall not be withdrawn until the closing of the Sale (if the Bidder is the Successful Bidder or Backup Bidder) or until after the Auction (if the Bidder is not the Successful Bidder or Backup Bidder), as applicable), or other evidence reasonably satisfactory to the Trustee; and
- b.** such other or alternative financial disclosure acceptable to the Trustee (including evidence that the Bidder has adequate resources to close the transaction) which demonstrates the financial capability of the Bidder to both consummate the Sale through its specific Bid and provide "adequate assurance of future performance," within the meaning of § 365(f)(2)(B) of the Bankruptcy Code, in relation to any executory contracts and unexpired leases and/or other agreements to be assumed and assigned to such Bidder under the proposed transaction.

Without limiting the foregoing, evidence of financial capability means at a minimum the provision of documentation establishing the unconditional availability of funds or unconditional loan commitments to the Bidder sufficient to pay the Bid (and any possible Increased Bid, as applicable, as provided below).

5. Evidence that the Bidder has obtained the requisite internal and legal authorizations and approvals necessary to consummate the proposed transaction without the necessity of obtaining the consent of any other person or entity;

6. A written statement identifying all of the Bidder's (including its officers, directors, shareholders, general partners, limited partners, managing members, managers, financial partners, and/or members, as applicable) connections (if any) with the Debtor, the Debtor's creditors, the Trustee, and any other party in interest in the Bankruptcy Case known to the Bidder;

7. A written statement setting forth any post-closing relationship or connection the Bidder contemplates having with the Debtor (including any officer, director, shareholder, member, insider or affiliate of the Debtor), including a description of the Bidder's plans (if any) to employ or otherwise retain any of the Debtor's employees if its successfully acquires the Property;

8. A cashier's check made payable to the Trustee (to be held in trust), as representative of the Estate for purposes of these Bid Procedures, or a wire transfer, in an amount of One Hundred And Fifty Thousand Dollars (\$150,000.00) (the "Deposit"), an amount sufficient to reimburse the Break-Up Fee to the Buyer and fund a replacement of the Buyer's original deposit (\$75,000.00) to the Seller. Wire instructions shall be provided upon request. Among other things, the Bankruptcy Court's order approving these Bid Procedures shall expressly provide for the Bidder's forfeiture of the Deposit if:

- a. the Bidder is determined to be a Qualified Bidder and withdraws its Bid or withdraws any subsequent Increased Bid before the announcement of the Successful Bidder and Backup Bidder;
- b. the Bidder is determined to be the Successful Bidder and attempts to modify or withdraw its Bid or any subsequent Increased Bid (as defined below) without closing the Sale transaction pursuant to such Bid or order of the Bankruptcy Court;
- c. the Bidder is determined to be the Backup Bidder and attempts to modify or withdraw its designated Backup Bid prior to closing on the Sale, unless the Sale shall have closed with the Successful Bidder; or
- d. the Successful Bidder or Backup Bidder, as applicable, fails to close without any fault of the Trustee or the Estate.

The Deposit shall be returned to the Bidder if (i) the Bidder is determined not to be a Qualified Bidder, (ii) the Bidder is determined not to be the Successful Bidder or Backup Bidder, or (iii) the Bidder is determined to be the Backup Bidder and the Sale is closed with the Successful Bidder. Deposits shall be returned, as applicable, interest free, within five (5) business days following the Auction, provided however, that in the case of the Backup Bidder, its Deposit shall be returned, interest free, within five (5) business days of the closing of the Sale to the Successful Bidder. The Deposit shall be applied to the Purchase Price upon closing.

9. A completed "Bidder Information Sheet" in the form of Exhibit "A" attached hereto.

C. **Form of Asset Purchase Agreement Required.** In addition to the foregoing requirements, the Bid and Bidder's Asset Purchase Agreement (i) shall not contain terms that are materially more burdensome or conditional than the terms of the Asset Purchase Agreement, (ii) shall not be conditioned on the Bidder obtaining financing or additional due diligence, and (iii) shall not entitle the Bidder to any break-up fee, termination fee, expense reimbursement, or similar type of payment.

VI. QUALIFIED BIDDERS

A. Only those Bidders who submit a Bid Package in strict compliance with all of the foregoing requirements on or before the Bid Deadline shall be entitled to have their respective Bids (a "Qualified Bid") considered by the Trustee (such a Bidder referred to herein as a "Qualified Bidder"). Each Qualified Bidder shall be notified of such designation by the Trustee. A Bidder who timely submits a written Bid but fails to satisfy all of the above requirements shall be promptly notified by the Trustee and given an opportunity to promptly cure such defects to the satisfaction of the Trustee, in his reasonable discretion. Only Qualified Bidders shall be allowed to participate at the Auction. Subject to Buyer paying the "Deposit" as required under the Asset Purchase Agreement, Buyer is deemed a Qualified Bidder. The Bankruptcy Court shall reserve jurisdiction to determine whether any Bidder is a Qualified Bidder and whether any Bid is a Qualified Bid.

VII. CREDIT BIDDING/LIENHOLDERS; PROHIBITED SETOFF, NON-CASH BIDS

A. Pursuant to Section 363(k) of the Bankruptcy Code, a holder of Lien against the Property securing an allowed claim (each such holder, a "Secured Claim Holder," and each such allowed claim, as determined by the Bankruptcy Court, an "Allowed Secured Claim"), unless the Bankruptcy Court orders otherwise, may bid at the Auction, and if the Secured Claim Holder is the Successful Bidder (or Backup Bidder who purchases the Property), such holder may offset its Allowed Secured Claim against the purchase price of the Property, subject to the additional terms hereof:

1. A Secured Claim Holder who desires to be a Bidder must submit a Bidder Information Sheet and Bid Package prior to the Bid Deadline; provided, however, any Secured Claim Holder who becomes a Successful Bidder will have to pay the Deposit in cash to the Estate.

2. The Bankruptcy Court will determine the amount of the Secured Claim Holder's Allowed Secured Claim that is permitted to be "credit bid" towards and offset against the purchase price of the Property.

B. Notwithstanding the foregoing provisions of this Article VII, and for avoidance of doubt, the holder of any claim that is not an Allowed Secured Claim, unless the Bankruptcy Court orders otherwise, may NOT offset its claim or any setoff or recoupment related thereto against the purchase price of the Property bid at the Auction nor, and, if such holder of a claim that are is not an Allowed Secured Claim is the Successful Bidder (or Backup Bidder who purchases the Property), such holder may NOT offset its claim or any set off or recoupment related thereto against the purchase price of the Property.

VIII. THE AUCTION

A. **Time and Place of Auction.** The Auction will occur only if more than one Qualified Bid for the Property is received by the Trustee by the Bid Deadline. If no Qualified Bid is made other than the deemed Qualified Bid made by Buyer, such Bid (i.e. the Buyer Bid) shall be submitted to the Bankruptcy Court for approval at the Sale Hearing without the need for an Auction.

1. If an Auction is held, the Auction will be conducted on **October 30, 2020, at 10:00 a.m., prevailing Pacific Time**, at the Bankruptcy Court before the Honorable Scott C. Clarkson, United States Bankruptcy Court, Central District of California, Santa Ana Division, Courtroom 5C, 411 W. Fourth Street, Santa Ana, California 92701, or via video conference call as determined by the Court. Attendance at the Auction must be in person (whether by video conference or in-person in the Courtroom as may be directed by the Court) individually or by an authorized representative.

B. Auction Procedures. The Bankruptcy Court will conduct the Auction in the manner that it determines is likely to result in the highest, best, or otherwise financially superior offer(s) for the Property taking into account the circumstances of the Case. In conducting the Auction, the following procedures (collectively, the "Auction Procedures") shall apply:

1. Prior to the Auction, the Trustee shall provide all Qualified Bidders with the amount of what the Trustee considers to be the highest and best Bid received, as determined by the Trustee taking into account all matters as the Trustee deems relevant (including price, including the cash and other consideration, modifications to the Asset Purchase Agreement, closing risk, risk of delay, financial condition and such other factors as the Trustee may deem relevant) (the "Qualified Opening Bid"), and the need to qualify for at least that amount in order to participate in the Auction. Qualified Bidders must qualify up to the amount of the Qualified Opening Bid in order to attend the Auction. Qualified Bidders who submit an Increased Bid above the level to which they have demonstrated financial capability to consummate a transaction to the satisfaction of the Trustee may be required to provide proof of their ability to consummate the Increased Bid prior to acceptance of such an Increased Bid. All Bidders are encouraged to prequalify to the amount for which they may wish to bid or to bring appropriate proof of financial capability, as may be acceptable to the Trustee, and the Bankruptcy Court, at such higher level with them to the Auction. Buyer is exempt from this requirement.

2. At the outset of the Auction, the Trustee shall advise the Bankruptcy Court of the Qualified Opening Bid determined by the Trustee to be the highest and best Bid received, taking into account all relevant factors. The Bankruptcy Court shall then confirm and/or determine which Bid it determines to be the highest and best Bid, taking into account all relevant factors, which Bid shall be the "Opening Bid." Qualified Bidders will be permitted to increase their Bids at the Auction (each such increased Bid, an "Increased Bid"), provided however that:

- a. The minimum amount of increased consideration required for each successive Increased Bid (the "Minimum Bid Increment") after the Initial Overbid will be \$25,000;
- b. Qualified Bidders are free to submit an Increased Bid in an amount in excess of the Minimum Bid Increment; and
- c. Qualified Bidders may submit Increased Bids at the Auction by submitting the Increased Bid amount to the Trustee and the Bankruptcy Court verbally at the Auction.

3. The Auction shall commence with the Opening Bid as confirmed or determined by the Bankruptcy Court. The Trustee and/or the Bankruptcy Court may limit a Bidder's time to submit an Increased Bid at the Auction as determined reasonable by the Trustee or the Bankruptcy Court. All incremental Increased Bids at the Auction shall be made and received in one room, on an open basis, and all Qualified Bidders shall be entitled to be present for all bidding with the understanding that the amount of each Increased Bid will be fully disclosed to all other Qualified Bidders throughout the entire Auction.

4. The Qualified Bidder with the highest and best final Bid for the Property at the close of the Auction (the "Successful Bid"), as advised by the Trustee, but subject to determination and confirmation by the Bankruptcy Court, shall be the "Successful Bidder." The Bankruptcy Court's final determination of what constitutes the first and second "highest and best" Bids will be based upon the exercise of the Trustee's and the Bankruptcy Court's discretion and may take into consideration price (including the cash and other consideration under the Asset Purchase Agreement), modifications to the Asset Purchase Agreement, closing risk, risk of delay, financial condition, and such other factors as the Trustee and/or the Bankruptcy Court may deem relevant. The Qualified Bidder having the next highest Bid below the Bid of the Successful Bidder (the "Backup Bid"), as determined and confirmed by the Bankruptcy Court shall be the "Backup Bidder," provided that Buyer may elect not to serve as the Backup Bidder in its discretion.

- a. The Successful Bid shall remain open, irrevocable and binding on the Successful Bidder until the closing of the Sale and shall be deemed withdrawn only in the event it is not approved by the Bankruptcy Court or in the event of a material breach by Debtor and Successful Bidder elects not to close.
- b. The Backup Bid shall remain open, irrevocable and binding on the Backup Bidder until the closing of the Sale to the Successful Bidder or in the event of a material breach by Debtor and Successful Bidder elects not to close.
- c. No Successful Bid or Backup Bid is binding on the Trustee or the Estate until the Bankruptcy Court enters an Order approving the Sale of the Property to the Successful Bidder / Backup Bidder.
- d. Bids attempted to be made after the Auction is closed by the Bankruptcy Court are automatically disqualified.

5. At the conclusion of the Auction, the Bankruptcy Court shall declare the identity of the Successful Bidder and the Backup Bidder to all parties present at the Auction.

6. The Bankruptcy Court, in consultation with the Trustee, may adopt such other Auction procedures that, in the Bankruptcy Court's reasonable judgment, will best promote the goal of a fair and competitive bidding process consistent with these Bid Procedures and any applicable Bankruptcy Court orders.

7. At the conclusion of the Auction:

- a.** The Successful Bidder and the Backup Bidder shall modify and execute the Asset Purchase Agreement to be consistent with the results of the Auction promptly after the Auction (but in any event within three (3) business days thereafter, or such later date that the Trustee agrees to in his sole discretion); and
- b.** If the Successful Bidder fails to close due to the Successful Bidder's breach or default, without fault of the seller under the terms of the Asset Purchase Agreement, the Estate shall retain the Deposit.

IX. SALE HEARING

A. The Trustee has filed a motion for approval of the Sale of the Property, subject to the completion of the sale process set out in these Bid Procedures (the "Sale and Bid Procedures Motion"). The Sale and Bid Procedures Motion seeks approval of the Sale. If authorized by the Bankruptcy Court, the Bankruptcy Court will hold a hearing to approve the Sale (the "Sale Hearing") on October 30, 2020, at 10:00 a.m., prevailing Pacific Time, at the Bankruptcy Court before the Honorable Scott C. Clarkson, United States Bankruptcy Court, Central District of California, Santa Ana Division, Santa Ana, California, immediately after conclusion of the Auction, at which hearing it will consider approval of the Sale to the Successful Bidder at the Auction.

X. MISCELLANEOUS

A. A party's participation in the sale process outlined herein shall constitute: (i) consent by such party to be subject to the jurisdiction of the Bankruptcy Court, for all purposes, in connection with any and all matters relating to the Sale of the Property and these Bid Procedures; and (ii) the party's acknowledgment of its review, understanding and acceptance of all of the Bid Procedures outlined herein.

EXHIBIT "A"

BIDDER INFORMATION SHEET

The following information is hereby provided by the Potential Bidder (as defined below) in accordance with the Bid Procedures approved by order of the United States Bankruptcy Court for the Central District of California in the case of Ruby's Franchise Services, Inc., Case No. 8:18-bk-13324-SC (the "Bid Procedures"). Unless separately defined herein, all capitalized terms shall have the meanings assigned to them in the Bid Procedures.

POTENTIAL BIDDER'S NAME:

_____ ("Potential Bidder")

TAX IDENTIFICATION NUMBER: _____

POTENTIAL BIDDER'S ADDRESS:

POTENTIAL BIDDER'S LEGAL COUNSEL:

AUTHORIZED OFFICER(S)/AGENT(S):*

*such individuals as have been authorized to act on behalf of Potential Bidder in communicating on matters regulated by the Bid Procedures::

Name: _____ Name: _____

Title: _____ Title: _____

Office Phone: _____ Office Phone: _____

Fax: _____ Fax: _____

Cell Phone: _____ Cell Phone: _____

E-Mail: _____ E-Mail: _____

[add additional names and contact information as appropriate]

[signature] [to be acknowledged on next page]

Title: _____

ACKNOWLEDGMENT

By signing below, the undersigned (as the Potential Bidder or as the representative of the Potential Bidder authorized to execute and submit this Bidder Information Sheet on behalf of the Potential Bidder) hereby (i) represents that Potential Bidder has a bona fide interest in submitting a Bid for the purchase of the Property, as defined in the Bid Procedures, and that Potential Bidder is hereby submitting this executed Bidder Information Sheet to participate in the sale process established under the Bid Procedures; (ii) acknowledges that the undersigned has reviewed and understands all of the Bid Procedures and that Potential Bidder accepts and agrees to be bound by all of the Bid Procedures; (iii) acknowledges Potential Bidder's consent to be subject to the jurisdiction of the United States Bankruptcy Court for the Central District of California, for all purposes, in connection with any and all matters relating to the Sale of the Property and the Bid Procedures; and (iv) certifies, under penalty of perjury, that pursuant to Article V.4.a. (and other applicable provisions) of the Bid Procedures, the Potential Bidder has liquid assets sufficient to consummate the Sale and to perform all on-going obligations associated therewith and will not withdraw such assets until the closing of the Sale (if the Potential Bidder is the Successful Bidder or Backup Bidder) or until after the Auction (if the Potential Bidder is not the Successful Bidder or Backup Bidder), as applicable.

Dated: _____

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)

) ss.

COUNTY OF _____)

On _____, 2020, before me, a Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under penalty of perjury under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)